

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SHENG-WEN CHENG,

Plaintiff,

-against-

UNITED STATES OF AMERICA,

Defendant.

23-CV-7602 (VSB)

ORDER OF SERVICE

VERNON S. BRODERICK, United States District Judge:

Plaintiff Sheng-Wen Cheng, who is currently incarcerated at the Federal Medical Center Rochester in Rochester, Minnesota, brings this *pro se* action challenging a federal policy which allegedly bars federal prisoners with immigration detainees, who are awaiting a final order of removal, to qualify for home confinement. Plaintiff challenges the constitutionality of this policy, claiming it violates the Equal Protection Clause of the Fifth Amendment, and he seeks relief under the Administrative Procedure Act (“APA”), 5 U.S.C. §§ 702, 703.

Because Plaintiff has been granted permission to proceed IFP, he is entitled to rely on the Court and the U.S. Marshals Service to effect service.¹ *Walker v. Schult*, 717 F.3d. 119, 123 n.6 (2d Cir. 2013); *see also* 28 U.S.C. § 1915(d) (“The officers of the court shall issue and serve all process . . . in [IFP] cases.”); Fed. R. Civ. P. 4(c)(3) (the court must order the Marshals Service to serve if the plaintiff is authorized to proceed IFP)).

¹ Although Rule 4(m) of the Federal Rules of Civil Procedure generally requires that a summons be served within 90 days of the date the complaint is filed, Plaintiff is proceeding IFP and could not have served the summons and the complaint until the Court reviewed the complaint and ordered that the summons be issued. The Court therefore extends the time to serve until 90 days after the date the summons is issued.

To allow Plaintiff to effect service on Defendant United States through the U.S. Marshals Service, the Clerk of Court is instructed to fill out a U.S. Marshals Service Process Receipt and Return form (“USM-285 form”) for this Defendant. The Clerk of Court is further instructed to: (1) mark the box on the USM-285 form labeled “Check for service on U.S.A.”; and (2) issue a summons and deliver to the Marshals Service a copy of this order and all other paperwork necessary for the Marshals Service to effect service on the United States.

If the complaint is not served within 90 days after the date the summonses are issued, Plaintiff should request an extension of time for service. *See Meilleur v. Strong*, 682 F.3d 56, 63 (2d Cir. 2012) (holding that it is the plaintiff’s responsibility to request an extension of time for service).

Plaintiff must notify the Court in writing if his address changes, and the Court may dismiss the action if Plaintiff fails to do so.

CONCLUSION

The Clerk of Court is instructed to issue a summons for the United States, complete the USM-285 form with the address for this Defendant, mark the box on the USM-285 form labeled “Check for service on U.S.A.” and deliver all documents necessary to effect service to the U.S. Marshals Service.

The Clerk of Court is directed to mail an information package to Plaintiff.

SO ORDERED.

Dated: February 26, 2024
New York, New York



VERNON S. BRODERICK
United States District Judge

DEFENDANT AND SERVICE ADDRESSES

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